

Message Text

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PAGE 01 LISBON 06651 01 OF 02 101731Z

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UNCLAS SECTION 1 OF 2 LISBON 6651

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SUBJECT: DRAFT FOREIGN INVESTMENT CODE

1. BELOW IS AN UNOFFICIAL EMBASSY TRANSLATION OF THE MOST IMPORTANT PORTIONS OF THE DRAFT FOREIGN INVESTMENT CODE NOW BEING STUDIED BY THE GOVERNMENT OF PORTUGAL: BEGIN TEXT
LEGAL CODE FOR FOREIGN INVESTMENT.

ART. 1 - IN THE PRESENT LAW, THE FOLLOWING IS CONSIDERED TO BE:

1. FOREIGN DIRECT INVESTMENT: ANY MONIES, OWNED BY INDIVIDUAL OR FOREIGN GROUPS, COMING FROM OUTSIDE THE COUNTRY INTO THE CAPITAL OF AN ESTABLISHED COMPANY OR ONE TO BE ESTABLISHED IN PORTUGAL, AND HAVING RIGHTS OF REPATRIATION OF THEIR VALUE AND RIGHTS OF TRANSFERENCE OUT OF THE COUNTRY OF PROFITS STEMMING FROM THE INVESTMENT.

THE ABOVE MENTIONED MONIES CAN BE BROUGHT IN THROUGH THE TRANSFERRING OF CONVERTIBLE EXCHANGE, THE UTILIZATION
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PAGE 02 LISBON 06651 01 OF 02 101731Z

OF INDUSTRIAL PROJECTS, MACHINES AND EQUIPMENT WHICH ARE IMPORTED

FOR THE INVESTMENT, AS WELL AS OTHER WAYS
LEGALLY AUTHORIZED.

FOREIGN DIRECT INVESTMENT IS ALSO THAT WHICH IS MADE
WITH FUNDS OBTAINED IN PORTUGAL HAVING THE RIGHT TO BE
RE-EXPORTED;

2. FOREIGN INVESTOR - THE OWNER OF A FOREIGN DIRECT
INVESTMENT;

3. NATIONAL INVESTOR: THE GOVERNMENT, NATIONAL INDIVIDUALS
OR GROUPS, AS WELL AS FOREIGN INDIVIDUALS RESIDING
UNINTERRUPTEDLY IN PORTUGAL FOR MORE THAN ONE YEAR, AND
FOREIGN GROUPS PROVIDED THEY EXPRESSLY RENOUNCE THE
RIGHT TO RE-EXPORT THE INVESTED CAPITAL AND TO TRANSFER
OUT OF THE COUNTRY PROFITS DERIVED FROM THEIR ACTIVITIES;

4. NATIONAL ENTERPRISES: THOSE LEGALLY ESTABLISHED IN
PORTUGAL, IN WHICH NATIONAL PARTICIPATION (PUBLIC OR
PRIVATE) OF ITS SHARE CAPITAL IS NOT LESS THAN 80 PERCENT, AND,
FROM WHICH RESULTS, IN ACCORDANCE WITH THE REGULATIONS OF
COMPETENT ENTITIES, THE CONTROL (BY NATIONALS) OF ITS COMMER-

5- MIXED ENTERPRISES: THOSE LEGALLY ESTABLISHED IN PORTUGAL
WHOSE NATIONAL PARTICIPATION (PUBLIC OR PRIVATE) OF ITS
SHARE CAPITAL IS LESS THAN 80 PERCENT AND EQUAL TO OR ABOVE
51 PERCENT PROVIDED THAT FROM IT RESULTS, IN ACCORDANCE WITH
REGULATIONS OF THE COMPETENT ENTITIES, THE CONTROL BY NATIONALS
OF ITS COMMERCIAL, ADMINISTRATIVE, FINANCIAL AND TECHNICAL
MANAGEMENT;

IF THE NATIONAL PARTICIPATION IS PUBLIC, THIS PARTICIPATION
CAN BE LESS THAN 51 PERCENT PROVIDED THAT THE CONDITIONS OF NATIONAL
CONTROL OF THE COMPANY ARE MAINTAINED.

CHAPTER 1 (DEFINITIONS)

6. FOREIGN COMPANIES - THOSE LEGALLY ESTABLISHED IN PORTUGAL
WHOSE NATIONAL PARTICIPATION (PUBLIC OR PRIVATE) IN ITS
SHARE CAPITAL IS LESS THAN 51 PERCENT, OR IF IT IS MORE THAN
51 PERCENT, THIS MAJORITY NATIONAL CAPITAL IS NOT REFLECTED
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PAGE 03 LISBON 06651 01 OF 02 101731Z

IN CONTROL OF ITS COMMERCIAL, ADMINISTRATIVE AND TECHNICAL
MANAGEMENT.

7. REINVESTMENT: THE INVESTMENT IN THE SAME COMPANY OF
PART OR ALL OF THE UNDISTRIBUTED PROFITS RESULTING FROM
THE FOREIGN DIRECT INVESTMENT.

CHAPTER II.

ART. 3. (SECTORS PROHIBITED TO FOREIGN DIRECT INVESTMENT).
FOREIGN DIRECT INVESTMENT IS PERMITTED IN ALL SECTORS EXCEPT
THOSE DIRECTLY INVOLVING THE DEFENSE OF THE STATE,
AND THE FOLLOWING:

A) PUBLIC SERVICES, SPECIFICALLY WATER, SANITATION,
ELECTRICITY, GAS, TELEPHONES, POST OFFICE, TELECOMMUNICATIONS
AND DOMESTIC TRANSPORTATION;

B) (ILLEGIBLE);

C) INSURANCE;

D) PUBLICITY, COMMERCIAL RADIO STATIONS, TELEVISION,
NEWSPAPERS AND MAGAZINES;

E) COMPANIES WHOSE PURPOSE IS THE INTERNAL COMMERCIALIZATION
OF ESSENTIAL GOODS;

F) OTHER SECTORS OF PUBLIC INTEREST EXPRESSLY DEFINED BY
GOVERNMENT DECREE.

CHAPTER IV (EVALUATION CRITERIA)

THE POTENTIAL FOREIGN DIRECT INVESTMENT PROJECTS IN PORTUGAL, ONCE
THEIR TECHNICAL AND COMMERCIAL VIABILITY IS PROVEN, SHOULD
BE SUBJECT TO EVALUATION, TAKING INTO CONSIDERATION, INTER
ALIA, THE FOLLOWING CRITERIA:

A) CREATION OF NEW JOBS;

B) POSITIVE CONTRIBUTION TO THE BALANCE OF PAYMENTS;

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PAGE 04 LISBON 06651 01 OF 02 101731Z

C) INTRODUCTION OF ADVANCED TECHNOLOGY;

D) UTILIZATION OF NATIONAL GOODS AND SERVICES;

E) PRODUCTION OF ARTICLES NOT MANUFACTURED IN PORTUGAL;

F) INCLUSION IN INDUSTRIAL RECONVERSION PROJECTS;

G) LOCATION, TAKING INTO CONSIDERATION REGIONAL DEVELOP-
MENT OBJECTIVES;

H) HIGH VALUE ADDED;

I) TRAINING OF PORTUGUESE WORKERS;

J) INDUSTRIAL POLLUTION.

ART. 8 (REINVESTMENT)

1. REINVESTMENT IS AUTOMATICALLY AUTHORIZED UP TO AN ANNUAL LIMIT OF 5 PERCENT OF THE COMPANY'S CAPITAL, AND IS SUBJECT TO REGISTRATION.

2. IN CASE THAT IT EXCEEDS 5 PERCENT OR ITS ACCUMULATED VALUE EXCEEDS 50 PERCENT OF THE INITIAL CAPITAL, IT IS SUBJECT TO THE REGULATION OF DIRECT INVESTMENT AS FORESEEN IN THE SPECIFIC TERMS OF THIS CODE.

ART. 9 (ACQUISITION AND ABSORPTION OF NATIONAL ENTERPRISES)
THE ACQUISITION OR ABSORPTION BY FOREIGN INVESTORS OF ALREADY CONSTITUTED ENTERPRISES IS SUBJECT TO AUTHORIZATION BY THE COMPETENT ENTITIES, WHICH FOR THIS PURPOSE, WILL TAKE INTO CONSIDERATION, THE CRITERIA OF ARTICLE 4, AS WELL AS THE FINANCIAL SITUATION OF THE ENTERPRISE.

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PAGE 01 LISBON 06651 02 OF 02 102004Z

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ACTION EUR-12

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UNCLAS SECTION 2 OF 2 LISBON 6651

(GUARANTEES AND INCENTIVES)

ART. 10. (PRINCIPLE OF NON-DISCRIMINATION)

WITH THE EXCEPTION OF WHAT IS DETERMINED IN THIS LAW,
THE ACTIVITIES RESULTING FROM FOREIGN INVESTMENT
IN PORTUGAL, WILL BENEFIT FROM THE SAME TREATMENT AND
CONDITIONS AS ESTABLISHED BY PORTUGUESE LAW FOR
THE ACTIVITIES RESULTING FROM PORTUGUESE INVESTMENT.

ART. 11 (TRANSFER OF DIVIDENDS AND OTHER PROFITS)
TRANSFER OF DIVIDENDS AND OTHER LEGITIMATE PROFITS ABROAD
WILL BE ALLOWED BY THE COMPETENT AUTHORITIES UNDER TERMS
TO BE DETERMINED CASE BY CASE.

ART.12 (RE-EXPORT OF INVESTED CAPITAL)

1. RE-EXPORTATION OF THE PROCEEDS FROM THE SALE OR
LIQUIDATION OF DIRECT FOREIGN INVESTMENTS, INCLUDING THE
INCREASED VALUE, WILL BE ALLOWED, AFTER DEDUCTION OF
RELEVANT TAXES.

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PAGE 02 LISBON 06651 02 OF 02 102004Z

2. IN CASE OF LIQUIDATION REFERRED TO UNDER NUMBER 1 OF
THIS ARTICLE, RE-EXPORTATION WILL ONLY BE AUTHORIZED
PROVIDED THAT THE COMPETENT ENTITIES HAVE BEEN NOTIFIED
SIX MONTHS IN ADVANCE.

ART. 13 (ACCESS TO FOREIGN CURRENCIES MARKET)

A FOREIGN INVESTOR HAS THE RIGHT TO TRANSFER ABROAD
THE AMOUNTS REFERRED TO UNDER ARTICLES 11, 12 AND 18
AT THE EXCHANGE RATES IN FORCE THE DAY THE TRANSFER IS
MADE. IN THIS REGARD, THE INVESTOR SHALL HAVE FULL
ACCESS TO FOREIGN CURRENCIES MARKET.

ART. 14 (INCENTIVES)

DIRECT INVESTMENTS IN PORTUGAL WILL BENEFIT FROM ALL
FISCAL INCENTIVES FORESEEN IN PORTUGUESE LAW.

ART. 15 (SPECIAL INCENTIVES)

1. IN CERTAIN CASES, CONSIDERED TO BE IN THE SPECIAL
INTEREST OF THE COUNTRY BY THE COMPETENT ENTITIES,
FOREIGN DIRECT INVESTMENTS MAY BENEFIT FROM ADDITIONAL
INCENTIVES.

2. IN REGARD TO NUMBER 1, IT WILL BE TAKEN INTO CONSIDERATION,
AMONG OTHER ASPECTS, THE FULFILLMENT OF THE CONDITIONS
DESCRIBED UNDER ARTICLE 4, AS WELL AS THE NATURE OF THE
ENTERPRISES (NATIONAL, FOREIGN OR MIXED) TO BE CONSTITUTED.

3. IN CASE OF THE BENEFITS AGREED UNDER THE TERMS OF NUMBER 2, THEIR EFFECTIVE ATTRIBUTION SHALL DEPEND ON THE REAL FULFILLMENT OF THE SPECIFIC TERMS DESCRIBED IN THE AUTHORIZATION.

ART. 16 (ACCESS TO CREDIT)

ENTERPRISES WITH FOREIGN CAPITAL WILL HAVE ACCESS TO INTERNAL SHORT-TERM CREDIT UNDER CIRCUMSTANCES EQUAL TO ANY OTHER ENTERPRISES, WITHOUT PREJUDICE TO WHAT UNCLASSIFIED

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PAGE 03 LISBON 06651 02 OF 02 102004Z

IS STIPULATED UNDER NUMBER 1 OF ARTICLE 20.

ART. 18 (EXPROPRIATIONS, NATIONALIZATIONS AND INDEMNIFICATIONS)

1. DIRECT FOREIGN INVESTMENT IN PORTUGAL WILL NOT BE EXPROPRIATED OR NATIONALIZED, EXCEPT FOR REASONS OF PUBLIC INTEREST.

2. IN CASE AN EXPROPRIATION OR NATIONALIZATION TAKES PLACE, THE CORRESPONDING INDEMNITY WILL BE PAID IN ACCORDANCE WITH ITS JUST VALUE, UNDER THE PORTUGUESE LAW.

CHAPTER IV (FINANCIAL PROVISIONS)

ART. 19 (IMPERATIVE RESTRICTION OF TRANSFERS)

THE TRANSFERS REFERRED IN ARTICLES 11, 12 AND 18 OF THIS CODE CAN BE TEMPORARILY SUSPENDED IN ALL OR IN PART BY DECISION OF THE COMPETENT ENTITIES IN CASE OF DANGEROUS DISEQUILIBRIUM IN THE BALANCE OF PAYMENTS OR IF THEY WILL CAUSE SERIOUS ECONOMIC AND FINANCIAL DISTURBANCES FOR THE COUNTRY.

ART. 22 (TRANSFER OF STOCK SHARES)

THE TRANSFER OF STOCK SHARES, PARTICIPATIONS OR CLAIMS OF A FOREIGN INVESTOR ON ANOTHER FOREIGN INVESTOR MUST BE PREVIOUSLY AUTHORIZED AND IS NOT CONSIDERED AS A RE-EXPORTATION OF CAPITAL.

CHAPTER V (MISCELLANEOUS PROVISIONS)

ART. 23 (NATURE OF THE ENTERPRISES)

1. THE ENTERPRISES CLASSIFIED AS PME (SMALL AND MEDIUM SIZED

ENTERPRISES) BY THE LAWS IN FORCE CAN TAKE THE FORM OF
NATIONAL, MIXED OR FOREIGN ENTERPRISES.

2. ALL OTHER ENTERPRISES CAN BE ONLY
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PAGE 04 LISBON 06651 02 OF 02 102004Z

NATIONAL OR MIXED ENTERPRISES.

3. FOREIGN ENTERPRISES THAT CEASE BEING PMR'S MUST CHANGE
THEMSELVES TO NATIONAL OR MIXED ENTERPRISES IN THOSE CASES
DETERMINED BY AND UNDER THE CONDITIONS FIXED BY THE COMPETENT
ENTITIES.

ART. 25 (OTHER LEGAL OBLIGATIONS)

THE ENTERPRISES REFERRED TO IN THIS LAW ARE SUBJECT TO ALL
OTHER OBLIGATIONS CONTAINED IN PORTUGUESE LAW.

ART. 26 (INVOICING)

WITHOUT PREJUDICE TO THE PENALTIES FIXED IN
PORTUGUESE LAW, ALL INVOICING WHICH PERMITS THE FLIGHT
OF CAPITAL OR THE EVASION OF THE LEGAL OBLIGATIONS TO
WHICH THE ENTERPRISE IS LIABLE, INCLUDING THOSE OF A
FISCAL NATURE, WILL CAUSE THE LOSS OF ALL INCENTIVES
AND BENEFITS ASCRIBED OR TO BE ASCRIBED UNDER THE TERMS
OF THE PRESENT LAW, AND MAY ALSO CAUSE THE LOSS OF THE
RIGHT TO TRANSFER PROFITS AND TO REEXPORT
INVESTED CAPITAL.

ART. 27 (FOREIGN INVESTMENT INSTITUTE)

THE COMPETENT AGENCY FOR THE IMPLEMENTATION OF THE DIRECT
FOREIGN INVESTMENT POLICY IS INSTITUTO DO INVESTIMENTO
ESTRANGEIRO (FOREIGN INVESTMENT INSTITUTE) WHICH OPERATES
JOINTLY WITH THE MINISTERIO DO PLANEAMENTO E COORDENACAO
ECONOMICA (ECONOMIC PLANNING AND COORDINATION MINISTRY).

ART. 31 (BILATERAL TREATIES)

BILATERAL OR MULTILATERAL TREATIES RELATED TO DIRECT
FOREIGN INVESTMENT WHICH THE PORTUGUESE GOVERNMENT MAY
COME TO SIGN MUST RESPECT THE PRINCIPLES CONTAINED IN
THIS LAW.

ART. 32 (TRANSFER OF TECHNOLOGY)

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PAGE 05 LISBON 06651 02 OF 02 102004Z

AGREEMENTS REGARDING THE TRANSFER OF TECHNOLOGY, ASSOCIATED
OR NOT TO DIRECT FOREIGN INVESTMENT, ARE SUBJECT TO
SPECIAL REGULATION.
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